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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 823

PAN AMERICAN PETROLEUM CORPORATION, *Petitioner*,

v.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., *Respondent*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENT'S OBJECTION TO MOTION OF WESTERN NATURAL GAS COMPANY FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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In this objection Respondent, pursuant to Rule 42(3), states its reasons for having withheld consent to the filing of the proposed brief *amicus curiae.*

The Petition for Writ of Certiorari herein was filed on March 28, 1962. Respondent asked and was granted an extension of the time for filing its Brief in Opposition to May 14, 1962. Having promised Petitioner to file such brief at an earlier date if possible, Respondent actually filed it on May 10, 1962.

Movant first got in touch with Respondent about the filing of a brief *amicus curiae* on May 2, 1962—35 days after the filing of the petition. Movant asked Respond-

ent whether it would consent to such filing. In the ensuing discussion, Movant was expressly asked:

(i) Whether any new factual or legal matter relevant to the proceeding would be presented in the contemplated brief *amicus*. The answer was in the negative.

(ii) Whether Movant was dissatisfied with the presentation of the facts and authorities by Petitioner. Movant answered that it considered the presentation in the petition to be adequate.

Since nothing of a substantial nature was to be contributed by the proposed brief *amicus*, and the question appeared not to have been raised a reasonable time prior to consideration of the petition, Respondent withheld its consent.

The motion and proposed brief which Movant has filed confirm the correctness of Respondent's withholding of consent. Movant states no relevant facts which have not been adequately presented by the Petitioner. The motion does recite that "there are other factors present *in Movant's case* which bear on a correct determination of the issue and should be presented to the Court." (Mot. pp. 1-2). (Emphasis added.) But surely "factors" in a state court action to which neither Petitioner nor Respondent herein is a party are not "facts" of which Movant must show the "relevancy to the disposition of the case" within the meaning of Rule 42(3).

In addition to irrelevant "factors" from a different case, Movant offers only that the impact of the decision below "should be more fully explained for a proper understanding by the Court of the importance of the

case." (Mot. p. 2) This falls far short of the requirement of Rule 42(3) that a motion of this type shall "set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties. . . ." This is particularly clear in view of Movant's concession that "the petition herein clearly and correctly presents the basic issue involved. . . ." (Mot. p. 2)

In any event, Movant's effort more fully to explain the impact of the decision below, and to breathe "national significance" into a common-law action to recover excess payments under a contract, turns out to be no more than a restatement or, at most, a minor amplification of the position of the Petitioner herein. The motion (p. 5) and the petition (p. 8, fn. 4) both offer statistics on filings for rate increases which are here completely irrelevant. (Br. Resp. Opp. p. 12, fn. 1) Indeed, if the decision below threatens "all segments of the natural gas industry" with the utter chaos which is so terrifyingly vivid to Movant (Mot. p. 5), it seems odd, to say the least, that not one other company from any segment of the industry has sought to voice its alarm as an *amicus curiae*.

Movant's proposed brief would describe the decision below as based on a "new and novel concept." (p. 8) That it was not so based but, rather, that it routinely recognized "traditional common-law claims" clearly appears from this Court's decision in *Pan American Petroleum Corp.* v. *Superior Court of the State of Delaware for New Castle County*, 366 U.S. 656 (1961). Movant's motion and proposed brief significantly fail to mention that case.

Movant's proposed brief would also suggest that the result below was reached through "legal legerdemain."

(p. 8) Actually it is Movant which, along with Petitioner, resorts to attempted sleight of hand or, better, the occult, in urging on this Court that a legal nullity, an order void *ab initio*,[1] should be given legal effect, which would be a judicial determination that a ghost has substance.

As the Movant has failed to meet the tests prescribed in Rule 42(3) and since it obviously has nothing to contribute which is relevant to this proceeding, the motion for leave to file a brief *amicus curiae* should be denied.

Respectfully submitted,

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[1] *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 355 U.S. 391 (1958); *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 184 Kan. 540, 337 P. 2d 640 (1959), *cert. den.* 361 U.S. 836 (1959).